

## HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioner has a fourteen-year-old daughter whose dentist has recommended comprehensive orthodonture for her. Her orthodontist submitted a Medicaid request for orthodontic treatment on August 1, 2006 on a form prepared by the Department. On that form he checked only that the girl's dentition met one minor criterion, "1 impacted cuspid". There was no indication on the form that there was any "other handicapping malocclusion". In a decision dated August 3, 2006 the Department denied this request after determining that

the girl's orthodontic problem was not severe enough to qualify for comprehensive orthodontic treatment.

2. On August 23, 2006 the same orthodontist submitted another request using the same form. This time he checked a major criterion, "2 impacted cuspids". In a decision dated September 1, 2006 the Department denied this request. The only explanation provided in the Department's notice of decision was: "Orthodontic problem does not meet the State's criteria for orthodontic treatment, and orthodontic treatment is not otherwise necessary under EPSDT found at M-100".

3. The petitioner filed an appeal of this decision on September 28, 2006. At a hearing held on October 23, 2006<sup>1</sup> the petitioner represented that his daughter's orthodontist had informed him that the first request for prior approval had erroneously indicated only one impacted cuspid, and that the second request had been submitted to correct this error. In support of this claim the petitioner submitted the following letter from his daughter's orthodontist, dated September 15, 2006:

Our office is planning orthodontic treatment for (petitioner's daughter). (Her) orthodontic problem list includes crowding in the upper dental arch with the impaction of both maxillary permanent cuspids. Bilateral

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<sup>1</sup> The Department's attorney participated by phone in the hearing due to illness.

impaction of maxillary cuspids is one of the "major criteria" for comprehensive orthodontic treatment authorization under the state Medicaid program. Accordingly, we believe (her) case qualifies for coverage under this program. Please contact our office should you need any additional information regarding this case.

4. At the October 23 hearing the hearing officer granted the Department a continuance to allow it to consider and, if necessary, respond to the above letter. The matter was reset for a telephone status conference on November 14, to consider any response from the Department.

5. At the status conference on November 14, 2006 the Department informed the hearing officer and the petitioner that it had not yet had a chance to review the above letter, and it requested additional time in which to do so. The matter was continued to December 6, 2006.

6. At an in-person status conference held on December 6, 2006, the Department again represented that it had not reviewed the orthodontist's letter. The Hearing Officer gave the Department a final deadline of December 14, 2006 to submit any evidence it wished to have considered in the matter, and he orally advised the Department that the

considered the orthodontist's letter to be *prima facie* proof of eligibility.<sup>2</sup>

7. At a phone status conference held on December 14, 2006 the Department informed the hearing officer and the petitioner that it still had not reviewed the orthodontist's letter, and that the only other record in the case consisted of review notes that predated the submission of the letter. The Department faxed copies of these documents to the hearing officer that same date. The Department offered no reason or excuse for its failure to have conducted any further review or consideration of the matter within the time allotted.

8. The records submitted by the Department include the following review note dated September 1, 2006:

(Department's reviewer) believes that the maxillary right cuspid (tooth #6) is probably impacted because there is no bulge on the labial and there is an overlap with the lateral root (tooth #7). However, (reviewer) believes that the left cuspid (tooth 11) should erupt. Therefore, the existing orthodontic problem only satisfies one minor criteria (1 impacted cuspid).

9. There is no claim or indication that the above notation was ever communicated to the petitioner or his daughter's orthodontist. At any rate, this review note

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<sup>2</sup> Due to the calendar of scheduled Board meetings, the continuances granted to the Department between November 14 and December 14 did not delay the timing of the Board's consideration of the petitioner's appeal.

predates the letter from the orthodontist, which was dated September 15, 2006, and provided to the Department on October 23, 2006.

10. Based on the orthodontist's letter, which at this point must be considered entirely uncontroverted, it is found that the petitioner's daughter has a condition that includes two impacted cuspids within the meaning of the regulations (*infra*).

ORDER

The Department's decision is reversed.

REASONS

The Department has adopted regulations which require it to pay for only "medically necessary" orthodontic treatment for Medicaid recipients under the age of twenty-one. W.A.M. §§ M622.1, 622.2, and 622.3. The regulations, and rulings by the Board and the Vermont Supreme Court, further provide that to be considered medically necessary the patient's condition must meet or equal one major or two minor malocclusions according to diagnostic criteria adopted by the Department's

dental consultant, or if it is otherwise medically necessary under EPSDT criteria found at M100. See M622.4.<sup>3</sup>

In this matter, the petitioner has presented clear and unequivocal medical evidence that his daughter meets one of the major criteria used by the Department to determine severity for the orthodonture program, "2 impacted cuspids". Despite being granted three separate continuances totaling almost two months in which it could have done so, the

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<sup>3</sup> The criteria require that the malocclusion be severe enough to meet a minimum of 1 major or 2 minor diagnostic treatment criteria as follows:

Major Criteria

Cleft palate  
2 impacted cuspids  
  
Other severe cranio-facial anomaly

Minor Criteria

1 Impacted cuspid  
2 Blocked cupsids per arch  
(deficient by at least 1/3 of needed space)  
3 Cogenitally missing teeth, per arch (excluding third molars)  
Anterior open bite 3 or More teeth (4+mm)  
Crowding, per arch (10+ mm)  
Anterior crossbite (3+ teeth)  
Traumatic deep bite Impinging on palate  
Overjet 10+mm (measured from labial to labial)

Department has presented no evidence or rationale that takes any issue with the orthodontist's September 15 assessment.<sup>4</sup>

Inasmuch as the Department's decision in this matter is plainly contrary to the evidence and to its own regulations, it must be reversed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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<sup>4</sup> To the extent it can be argued that the Department's review note of September 1 can be considered "evidence" that controverts the clear findings and opinion expressed by the orthodontist, it would be entitled to little, if any, weight. There is no indication whatsoever that the petitioner's orthodontist misunderstands either the requirements of the regulations or the medical meaning and significance of the term "impacted". At any rate, a mere file note that predates the evidence offered by the petitioner, coupled with the Department's failure to even *attempt* to resolve a difference of opinion (or even indicate that there still *is* one) removes any deference to or serious consideration of the file note in question.